

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

JONES V. JONES

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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KENT E. JONES, APPELLEE,
V.
RUBY DENISE JONES, APPELLANT.

Filed August 21, 2012. No. A-12-157.

Appeal from the District Court for Lincoln County: DONALD E. ROWLANDS, Judge.
Affirmed.

Kristi L. Hilliard, of Snyder, Hilliard & Bishop, L.L.O., for appellant.

Luke T. Deaver, of Person Law Office, for appellee.

PIRTLE and MOORE, Judges, and CHEUVRONT, District Judge, Retired.

PIRTLE, Judge.

INTRODUCTION

Ruby Denise Jones appeals the journal entry and order of the district court for Lincoln County filed January 25, 2012. Ruby claims the trial court erred in failing to consider the relationship of the minor child to each parent prior to the commencement of the action when granting custody to the father, Kent E. Jones, and erred by failing to determine the best interests of the minor child. For the reasons that follow, we affirm the decision of the district court.

BACKGROUND

This case was originally heard by the district court for Lincoln County on August 19 and September 3, 2010. This court previously considered an appeal filed by both parties in this case and found, in relevant part, that the trial court erred in finding Ruby unfit to have custody of the minor child. We reversed that decision of the trial court and remanded the issue to the trial court for further proceedings. For a complete statement of the underlying facts and issues tried in the

original proceeding, see *Jones v. Jones*, No. A-10-1017, 2011 WL 4905529 (Neb. App. Oct. 11, 2011) (selected for posting to court Web site).

Following a hearing on December 13, 2011, the trial court entered a journal entry and order on January 25, 2012. After reviewing the record, the trial court concluded that both Ruby and Kent were fit and proper persons to have the care, custody, and control of the minor child. The court also determined that it was in the best interests of the minor child to award permanent care, custody, and control to Kent, subject to the right of reasonable visitation and parenting time of Ruby in conformance with the established parenting plan.

ASSIGNMENTS OF ERROR

On appeal, Ruby asserts the trial court erred by failing to consider the relationship of the minor child to each parent prior to the commencement of the action and by failing to determine that it was in the child's best interests to grant custody to Ruby.

STANDARD OF REVIEW

Child custody determinations are matters initially entrusted to the discretion of the trial court, and although reviewed de novo on the record, the trial court's determination will normally be affirmed absent an abuse of discretion. *Farnsworth v. Farnsworth*, 257 Neb. 242, 597 N.W.2d 592 (1999).

The court will give weight to the fact that the trial judge observed and heard the witnesses and accepted one version of the facts rather than the other. *Id.*

To find that a judicial abuse of discretion occurred requires that the reasons or rulings of a trial judge be clearly untenable insofar as they unfairly deprive a litigant of a substantial right and just result. *Id.*

ANALYSIS

Ruby asserts the trial court erred in failing to consider the relationship of the minor child to each parent prior to the commencement of the action. However, this factor is clearly addressed by the trial court in the January 25, 2012, order.

The trial court detailed the custody and care arrangements starting from the child's birth in its order. The court noted that "there is no question that [Ruby] was the primary caregiver for the minor child during 2006 and all of calendar year 2007." During that time, Kent was frequently away from home approximately 12 days per month. The court acknowledged the care Ruby provided during that period, as a stay-at-home mother who breastfed the child for slightly over a year. In January 2008, Kent was no longer away from home during the evening hours and Ruby went back to work. At that point, the parties were "equal caregivers for the minor child" until Kent was granted temporary custody in early 2009.

The court also considered the trial testimony regarding Ruby's relationship with the child prior to and during the separation of the parties, leading up to the commencement of this action. The court reviewed testimony regarding Ruby's behavior toward the minor child, noting that she "looked like she didn't want to care for her minor child" and that she "acted like [the child] was a nuisance."

The court contrasted this behavior with several positive accounts of Kent's relationship with the minor child, as part of its decision to award custody to Kent. The court clearly considered the relative relationships of the parties with the minor child prior to and after the commencement of this action, and we find no abuse of discretion by the lower court.

Ruby also asserts the trial court erred by "failing to find that it was in the best interest of the minor child that custody be awarded to the . . . Mother."

In determining custody and parenting arrangements, the court shall consider the best interests of the minor child. Neb. Rev. Stat. § 43-2923(6) (Cum. Supp. 2010). The trial court reviewed the trial record and concluded it was in the best interests of the minor child to award the permanent care, custody, and control of the minor child to Kent. This decision was based upon § 43-2932, Neb. Rev. Stat. §§ 42-364 and 43-2923 (Cum. Supp. 2010), and *McDougall v. McDougall*, 236 Neb. 873, 464 N.W.2d 189 (1991).

The district court conducted a detailed analysis of the best interests of the child, including consideration of the general health, welfare, and social behavior of the child; the moral fitness of the parties; the stability of each parent's character; and the capacity of each parent to provide physical care and satisfy the needs of the child. The court's conclusion to award custody to Kent is supported by the evidence.

As noted above, the evidence shows Ruby's behavior has shown a lack of interest in parenting the minor child. She has also been fired from four employment positions since 2005, and her relevant legal history includes a child endangerment conviction and a deferred adjudication probation in the State of Texas. Though the evidence indicates Ruby has improved her job performance and is generally a fit person to have the care, custody, and control of the minor child, the court found Kent to be a more appropriate person to receive permanent custody.

Kent is an affectionate, attentive caregiver, who makes sure the minor child is "always well-dressed, well-fed, healthy and happy." Several witnesses testified that Kent is a more involved parent, that he would provide better care in raising the minor child, and that he shares an emotional relationship superior to the relationship between Ruby and the minor child. The district court did not abuse its discretion simply because it awarded custody to the father over the mother.

CONCLUSION

A review of the record does not reveal a judicial abuse of discretion with regard to the determination of the child's best interests, and we find the court did not fail to consider the relationship of the parties to the minor child when determining the custody arrangement. Accordingly, we affirm the decision of the district court.

AFFIRMED.